



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10
1200 Sixth Avenue
Seattle, WA 98101

RECEIVED BY
JUL 26 2004
SNAKE RIVER BASIN OFFICE
U.S. FWS

20 JUL 2004

Reply To
Attn Of: OW-134

Jeff Foss, Supervisor
Snake River Fish and Wildlife Office
US Fish and Wildlife Service
1387 S. Vinnell Way, Room 368
Boise, Idaho 83709

NO ACTION
/s/ A Beck Haas

Subject: EPA Action on Idaho's Natural Conditions Criteria, Point Source Temperature Requirement Provision, and Snake River/Hells Canyon 13 Degrees C Criteria Pending Completion Endangered Species Act (ESA) Consultation

Dear Mr. Foss:

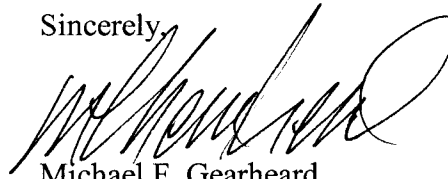
EPA initiated consultation with the Service(s) on January 21, 2004, under Section 7(a)(2) of the Endangered Species Act via conference call. The subject of the consultation is Idaho's revision to its water quality standards, including adoption of a natural conditions criteria, point source temperature requirement provision, and adoption of a 13 degrees C criteria for the Snake River/Hells Canyon. On February 10, 2004, we submitted biological evaluations covering these actions to you for your review and action. On March 18, 2004 you requested more information on these consultations. On March 31, we responded to your information request and indicated why we believe the biological evaluations were sufficient to proceed with consultation. On July 9, 2004, we received a concurrence with our "not likely to adversely affect" determination from NOAA-Fisheries on our approval of the 13 degree C criteria.

I would like to apprise you of our need to proceed with our approval actions on these standards. As you are aware, we have a number of projects that are on hold pending the approval of these water quality standards changes. The projects need to move forward and should not be further delayed. Based on recently completed ESA consultation with USFWS on a very similar standards in Oregon, we believe that it is appropriate to move forward with our approval actions under section 7(d) of the ESA. Our experience in the Oregon consultation indicate that any conditions you may place in your biological opinion are not likely to affect our underlying approval of these standards, but rather relate to studies or implementation of the standards. We therefore believe that our approval of these criteria subject to the results of consultation under Section 7(a)(2) of the Endangered Species Act will not irreversibly or irretrievably commit resources nor foreclose the formulation or implementation of reasonable and prudent alternatives which would violate section 7(a)(2) of the ESA. Thus, we are planning to approve these standards "subject to the results of the consultation under Section 7(a)(2) of the ESA."

Further, the part of Idaho's standards that we initiated formal consultation is the point source temperature requirement provision. As explained in the BE, EPA believes this standard minimizes any potential adverse effects/take in that it conforms with the EPA Temperature Guidance recommendations. Additionally, as indicated in the BE, EPA issues the NPDES permits in Idaho and undergoes ESA section 7 consultation on all "may affect" draft permits. Therefore, the FWS will have to opportunity to review all permits where the point source temperature requirement standard is applied to derive temperature effluent limits, and if needed, apply any additional terms and conditions to further minimize adverse effects/take on a case-specific basis.

We appreciate the time and effort you and your staff have devoted to this consultation and look forward to completing these consultations. If you have any questions or concerns, please call me (206) 553-7151 or John Palmer (206) 553-6521.

Sincerely,



Michael F. Gearheard

Director

Office of Water & Watersheds

cc: Toni Hardesty, IDEQ
Dave Mabe, NOAA Fisheries, Boise